

OFFICE OF LEGAL AFFAIRS

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***Valdivia v. Schwarzenegger*****California Department of Corrections and Rehabilitation
-Valdivia Monitoring Report-****Submitted by the Office of Court Compliance****Wasco State Prison
Tapes and Documents Tour****2009- Third Quarter****August 2009**

The Office of Court Compliance (OCC) submits this report on the Third Quarter 2009 tapes/documents monitoring tour of Wasco State Prison. The OCC reviewed parole revocation documents and revocation hearing tapes in lieu of on-site observations and staff interviews. The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedures governing parole revocation.

In preparation for the tour, the OCC reviewed 100 revocation packets provided to CalPAP, thereby enabling a review of the quality and completeness of documents given to the parolee and his/her attorney. Timeliness statistics from those cases can be found in Exhibit 1-A. A summary of the compliance issues identified from the packets is found in Exhibit 1-B. The OCC also reviewed 12 revocation hearing tapes and associated packets.

This report identifies deficiencies that require corrective action(s) and a Corrective Action Plan (CAP) is attached to this report and is available from the OCC upon request. The OCC will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies. However, the OCC is always available to provide input or suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes. The OCC is also available to assist in investigating the underlying causes that contribute to the compliance issues identified herein. Each division shall utilize this report to complete the attached CAP by documenting their proposed/implemented corrective actions and return to the OCC within 30 days.

1) Probable Cause Determination (PCD)

a) Timeliness

There were three cases in which the 1502-B was not included in the packet or the unit supervisor (US) did not date the form. Therefore timeliness analysis from the 1502-B itself was only completed for 97 cases. A timely PCD occurred in 94/97 cases (97%). *Exhibit 1-A*. Two cases were one day late and one case was two days late at this step. *Id.* For those cases missing the necessary 1502-B information to determine timeliness, RSTS reveals that the unit supervisors entered all three cases into RSTS and that all three PCDs were timely. Therefore, the OCC verified that 97/100 PCDs were timely (97%).

According to the RSTS "Closed Case Summary- Valdivia Timeliness Rules" report, 96% of PCDs were timely in June, 95% were timely in July and 93% were timely in August for cases processed out of the Wasco DRU.

b) Qualitative Document Review

- Two packets reviewed prior to the tour did not include the 1502-B. *Exhibit 1-B*. This document should be included in every revocation packet provided to CalPAP.
- There were three 1502-Bs that were not signed/dated by the Parole Agent or Unit Supervisor to document when their case reviews occurred. However, the PCD for these cases was ultimately entered into RSTS. *Exhibits 1-B and 2*.
- There were eight cases in which the probable cause box on the 1052-B was not marked by the US to verify that probable cause was found. *Exhibit 1-B*. A few examples are attached as *Exhibit 3*.

2) Notice of Rights/Charges

a) Timeliness

There were four cases in which the BPH 1100 was not included in the revocation packet and therefore timeliness of the notice could not be determined from the 1100. A timely notice was completed for 86/96 reviewable cases. *Exhibit 1-A*. For those cases where timeliness could not be determined from the revocation packet itself, the notice agent entered all four cases into RSTS and only one of those was timely. Therefore, 87/100 total notices were verified as occurring no later than three business days after the hold was placed. Analysis of the 13 late notices, and possible good cause reasons for delay, is as follows:

1. Duarte (T31366)- Notice was two business days late. The parolee was returned to California on 6/4/09 but the notice did not occur until 6/11/09. RSTS does not document any good cause reason for the late notice.
2. Fain (F73467)- Notice was one business day late and RSTS does not document any good cause reason for delay.
3. Fuchs (V90753)- Notice was five business days late. RSTS case comments indicate the notice agent did not receive the 1502-B until 6/12/09 (four business days after the

- NLT for notice). The parolee was then transferred to Wasco before notice could be served and the notice agent had to forward the documents to Wasco for service, causing additional delay. There is no good cause for providing the notice documents late to the notice agent.
4. Ignacio (J41248)- Notice was one business day late. RSTS case comments reveal that the notice agent attempted a timely notice twice but the parolee was unavailable because he was out to court and then transferred to Wasco. The notice documents were faxed to Wasco and the parolee was served the same day he was transferred. There is good cause for delay due to out-to-court status.
 5. Jones (F79702)- Notice was two business days late. RSTS shows that a timely notice was attempted but the parolee had been taken to Fresno PD for an investigative interview and was unavailable. The notice agent again attempted to serve the parolee the following day but was not permitted due to institutional lockdown. Notice was completed the next business day. There is good cause for delay.
 6. Mendez (G40369)- Notice was one business day late. The notice agent documented that the notice was timely in RSTS (RSTS shows notice occurred on the NLT of 6/16/09). However, the notice documents themselves are all signed and dated by the parolee and notice agent on 6/17/09, one day late. The notice agent did not properly record the date of notice in RSTS. There is no good cause for the late notice.
 7. Morales (V83712)- Notice was two business days late. The FUNA attempted to serve the parolee at county jail on 6/1/09 (the NLT) but the parolee had been transferred to Wasco. The FUNA faxed the notice documents to Wasco the next day and the DRUNA attempted notice but was unsuccessful, noting the parolee was en route to CDCR. However, OBIS shows that the parolee arrived at Wasco on 6/1/09 so it is unclear why the notice agent indicated he was still en route on 6/2/09. There was no good cause for delay in service.
 8. Moreno (G30052)- Notice was one business day late and RSTS does not indicate any reason for the delay. No good cause for late notice.
 9. Negrette (P98138)- Notice was one business day late; however, RSTS indicates that a timely notice was attempted but the parolee was unavailable because he was en route to CDCR. The notice agent was able to serve the parolee the following day. There is good cause for delay.
 10. Rabara (T98356)- Notice was four business days late. The case was not given to the FUNA until one day after the NLT and then the FUNA confirmed the parolee had transferred to Wasco, causing further delay as the notice documents were forwarded to Wasco. There is no good cause for delay in notice as the NLT had passed by the time the FUNA first received the notice documents.
 11. Rodriguez (F35152)- Notice was one business day late. A timely notice was attempted but the parolee had been transferred from the county jail to Wasco. There was good cause for delay.
 12. Rodriguez (F29153)- Notice was two business days late. The parolee was transferred from county jail to Wasco on the NLT for notice before the FUNA could serve him at the jail. The parolee was not served at Wasco for two more days. No good cause for delay.
 13. Schuck (F93207)- notice was one business day late. The FUNA did not receive the notice documents until the NLT and had to fax them to Wasco because the parolee

had been transferred from the county jail. The notice documents were signed by the parolee and notice agent on 6/9/09, one day late, but the notice agent entered into RSTS that notice occurred on 6/8/09. The notice agent did not properly record the actual date on which the parolee was served in RSTS and there was no good cause for delay.

Out of a total of 100 notices reviewed, 91 were timely or there was good cause for the delay (91%).

CalPAP's data reveals the following timeliness statistics for notice:

Month	Cases Reviewed	Cases in compliance	Percent Timely
May 2009	907	836	92.17%
June 2009	1,012	954	94.27%
July 2009	992	916	92.32%

b) Factual Summary on 1502-B

Twenty two of the 1502-Bs (22%) did not contain an adequate factual statement of the **charged conduct**. ***Exhibits 1-B and 4***. This is a slight increase in compliance since the last time CDCR's monitors audited Wasco, at which time 27% of factual summaries were inadequate. Parole agents must be required to provide factual statements of charged conduct in order to provide the parolee actual notice of the alleged charges, not merely cite the charges themselves or a conclusion that parole was violated. It was noted that 17 of the deficient factual summaries were associated with a charge of absconding. In most of these cases the parole agent simply stated that the parolee was arrested on a PAL warrant. This is insufficient to put the parolee on notice of the facts that have rise to issuance of the PAL warrant and absconding charge. Unit supervisors must discontinue the practice of approving 1502-Bs that contain little information to put the parolee on notice of the conduct that led to the alleged violations. Parole agents and unit supervisors were trained on this subject in 2008 but the problem persists. Deficient factual summaries were submitted from the following parole units:

Visalia 1- two cases; Visalia 2- two cases; Fresno 2- two cases; Fresno 3- one case; Fresno 5- two cases; Fresno 7- six cases; Huntington Park 3- one case; Bakersfield 4- two cases; Bakersfield 5- one case; Bakersfield 7- one case, Antelope Valley 1- one case; Antelope Valley 2- one case; Oxnard- one case; Ventura 2- one case.

c) Charges Added After Notice

There were 23 cases in which charges were added after the parolee was served notice. In 15 of those (65%) there was at least one charge added that was or should have been known to the parole agent at the time the 1502-B was authored. ***Exhibit 1-B***. Each deficient case is summarized in the table below¹:

¹ Charges noted in bold print were those added after the parolee was served notice.

Parolee CDC #	Parole Violation Charge(s)	Narrative Summary
Brasher F34691 Huntington Park 3	Absconding; Traveling beyond 50 miles; Failure to attend/complete 52 wk batterers program	Per the violation report the parolee was removed from the batterer's program on 9/24/08 for failure to attend and continued absences (approx. 8 months prior to the current arrest). A review of the field file at the time the 1502-B was written would have revealed the SCOP and the failure to complete the program.
Casica T45329 Bakersfield	Use of methamphetamine; Absconding; Poss. of drug paraph; Assoc w/person prohibited	Per the violation report, the AOR received a positive test results on 3/6/09. The parolee was arrested on 5/27/09. A review of the field file would have revealed the unresolved violation. The added charge should have been included on the initial 1502-B.
Gonzales G20507 Bakersfield 4	Absconding; Assoc. w/person prohibited; Use of methamphetamine	Per 1502-B the AOR received a phone call on 5/15/09 from parolee's nephew that parolee is looking for his mother. Per the violation report the Parolee has a SCOP of no contact with his mother signed on 5/13/09. The parolee was arrested on 5/21/09. The incident leading to the alleged violation was noted on the 1502-B but not listed as a charge.
Hamby F44283 Santa Maria	Poss. of firearm; Poss. of firearm on state park; Contributing to the delinquency of a minor; Gang Association; Failure to attend drug treatment	Per the violation report, the AOR was aware the parolee had not completed a drug treatment program in advance of his arrest. The failure to attend drug treatment violation should have been included on the 1502-B.
Ignacio J41248 Visalia 1	Absconding; Removing GPS; Under the influence of C/S; Poss. of PCP; Poss. of Marijuana; Failure to register PC290	Per the violation report the AOR issued a PAL Warrant on 2/18/09 when the parolee "cut-off" this GPS Device and could not be located. The additional violation was known at the time the 1502-B was written and should have been included.
Jackson F99450 Fresno 7	Failure to ANT; Poss. of caustic substance	The additional charge was the result of DAPO-assisted anti-narcotic testing. AOR should have requested a full detail account of the incident from involved agents at the time the 1502-B was written.
Kell F63597 Oxnard	VSCOP/use of alcohol; Use of Meth; Threaten /Harassing another; Obstruct/delay a PO	Per the Ventura County Sheriff's Incident Report, the arresting deputy contacted the AOR relaying information of the arrest. AOR should have had a full account of the incident and all related alleged violations should have been included on the 1502-B.
Madden F47260 Fresno 7	Absconding; Use of PCP; False information; Resisting arrest; Assoc. w/prohibited person; Failure to follow instructions	The violation report noted the AOR received an anti-narcotic test positive for PCP. Test results were received on 1/27/0, months before the parolee was arrested on 5/18/09. Additionally, the failure to follow instructions was related to the parolee's failure to report to Prop 36 treatment on 12/31/08. A review of the field file would have revealed the unresolved violations.
Mendoza G33714	Poss. of deadly weapon; Poss. of	Sheriff's Report noted the AOR was

Fresno 2	drug paraphernalia	contacted to authorize the parole hold. AOR should have received a complete list of all violations found at the time of the arrest.
Moreno G30052 Oxnard	VSCOP-Alcohol; Drinking alcohol in public; Delaying or obstructing PO	The possession of open container should have given the indication that alcohol was involved in the incident and a review of the field file would have revealed the SCOP of no alcohol. The added violation should have been included on the 1502-B.
Paz V29695 Oxnard	VSCOP – Failure to participate in a drug treatment program	The initial charge was written as a failure to follow instruction by DAPO based on the fact the parolee left his treatment program; however, the AOR was aware of the SCOP and that the parolee had violated his SCOP by failing to participate in drug treatment.
Perez P94724 Ventura 2	Assoc. w/gang members; Use of methamphetamine; Failure to follow instructions/Prop 36	Per the violation report and review of the test results, the AOR received the positive anti-narcotic test results on 5/18/09. Additionally, on 5/20/09 the AOR received information of Prop 36 non-compliance. Information on both violations was known prior to the parolee's arrest on 5/25/09 and should have been included on the initial Charge Report.
Schuck F93207 Hanford	Absconding; Battery on spouse; Use of Methamphetamine	Per the violation report, the AOR received a positive anti-narcotic test results on 5/28/09. The parolee was arrested on 6/3/09. A review of the field file would have revealed the additional violation and should have been included in the 1502-B.
Shipp F08381 Fresno 7	Absconding; Failure to register HS11590	The violation report indicates the parolee is required to register HS 11590, a review of the field file and a verification of non-compliance should have been done at the time the 1502-B was written.
Vasquez F36488 Fresno 2	Failure to follow instructions; Failure to report; Failure to attend POC; Failure to attend POC; Use of Marijuana;	Per the violation report, the AOR received notice on 5/18/09 that on 5/17/09 the parolee self-discharged from the treatment program he was ordered to attend by DAPO. Additionally, the parolee failed to report after leaving the program on 5/17/09. The parolee was arrested on 6/15/09. A review of the field file would have identified the additional violations and should have been included on the 1502-B.

d) BPH 1073 Form, ADA Source Documents, Accommodations and Effective Communication

There were 29 cases in which Section I of the 1073 identified disabilities from the field file/DECS review but there was no source document attached to the packet. *Exhibit 1-B*. CalPAP's data shows that 26% of packets assigned in June 2009 and 18% of packets assigned in July 2009 were missing required source documents. The lack of source

documents continues to be a problem statewide and must be addressed jointly between DAPO and DAI. The OCC will assist in an inquiry to determine the source(s) of the breakdown in information sharing.

There was one case in which Section I of the 1073 had no boxes marked to indicate whether or not the parolee had any identified disabilities. *Exhibits 1-B and 5*. There were three cases in which Section I of the 1073 was completed incorrectly wherein two boxes were marked- one indicating no disabilities and the other indicating existence of a disability. *Id.* There were two cases in which Section II of the 1073 had no boxes marked to indicate whether or not the parolee self-identified a need for any accommodations during the parole proceedings. *Id.* Similarly, there was one case in which the notice agent entered contradictory information into a 1073 indicating accommodations were required and also indicating the parolee did not require any assistance for his parole proceeding. *Id.* Finally, there were two cases in which Section III of the 1073 was completed incorrectly in that the notice agent did not indicate whether or not the parolee appeared to understand the notice or had difficulty understanding.

Another problem identified from a review of the documents is the lack of documentation concerning the offering or provision of accommodations during a notice. There were 14 cases in which Sections I and/or II of the 1073 indicated some disability or accommodation need but the notice agent did not document in Section III that an accommodation was offered or provided during the notice to facilitate effective communication. *Exhibits 1-B and 5*. For example, parolee Cammon (T68815) has a documented reading level of 2.9 but there are no notes to indicate that the parolee was able to read or that the documents were read to him. Parolee Fuchs (V90753) requested assistance reading documents and understanding procedures and forms but the notice agent did not document that assistance was offered or provided. Notice agents must be mindful of the need to document any accommodations offered or provided during a notice, even if a parolee declines its use. Notice agent are protected when they document that every effort was made to facilitate existing or reported disabilities even where the parolee elects not to take advantage of the accommodation.

There were also some cases in which the information documented on the 1073 did not include information contained in DECS. For example, DECS indicates parolees Rodriguez (F29153), Kell (F63597) and Davis (F02139) are CCCMS but this is not noted on the 1073. *Exhibit 6*. Prior 1073s for parolee Leon (V56530) indicate he walks with assistance. The DAI Summary screen in DECS shows a lower bunk requirement. This is not noted on his current 1073. The DAI Summary screen indicates parolee Losada (V81152) has a TABE score of zero and the Institutional data screen shows a history of low cognitive scores but this is not documented on the 1073. *Exhibit 7*.

3) Violation Report, Unit Supervisor Review and Revocation Packets

a) Timeliness

A unit supervisor conducted a timely review of the violation report in 97/99 reviewable cases (98%). *Exhibit 1-A*. The two late cases were one and two days late. *Id.*

b) PVDMI

There were 55 packets that included a completed PVDMI. From this sample there were no DAPO overrides of the instrument's recommendation. There were 28 cases (51%) in which the parole agent overrode the instrument's recommendation to request a return to custody rather than some less intense response. There were 20 cases in which the parole agent and unit supervisor concurred with the instrument's recommendation for a return to custody and seven cases in which the parole agent and unit supervisor concurred with the instrument's recommendation for a most intensive A, least intensive or moderately intensive response (all were recommendations to ICDTP or PSAP). There was one case in which the parole agent overrode the PVDMI to recommend a return to custody but the unit supervisor disagreed and overrode the parole agent to conform to the instrument's recommendation (the unit supervisor recommended ICDTP). There was also one case in which the parole agent concurred with the instrument's recommendation for "Most Intensive A" response and recommended ICDTP, but the unit supervisor overrode that and recommended a return to custody.

Almost all overrides occurred when the instrument recommended something less than a return to custody (Most Intensive A, Moderately Intensive or Least Intensive) and the parole agent instead recommended a return to custody. In every case in which the agent made such an override, they documented the destabilizing factors that supported their decision. It should be noted that there were a number of cases in which the parole agent and unit supervisor chose an override option to recommend a return to custody because the parolee had local charges pending and could not be released from custody to attend a remedial sanction or community program.

c) Arrests and Convictions on the CDCR 1521-B

There has been great improvement in the quality of information contained on the CDCR 1521-B concerning arrest and conviction history. There were only four cases in which the parole agent failed to differentiate arrests from convictions in their summary of parole adjustment. *Exhibits 1-B and 8.*

d) Special Conditions of Parole

Out of forty cases in which the parolee was charged with violating a special condition of parole there were four packets (10%) that did not include a copy of the CDCR 1515 conditions of parole and/or addendum as supporting evidence. The conditions of parole must be included as evidence that the parolee was served the conditions and therefore knew about their application.

e) Priority Designation

Twenty nine cases met the criteria for priority designation. In 15 cases neither the parole agent nor unit supervisor marked the violation report "Priority" as required by existing

policy. *Exhibit 1-B*. Priority designation was designed to ensure parole revocation cases posing the highest risk to public safety are processed expeditiously throughout the entire process. The OCC recognizes there is no violation of the Injunction or due process when revocation packets are not marked priority at the field units. However, failure to comply with this policy can have a significant impact later in the process when critical timelines associated with the probable cause and revocation hearings may be violated and charges dismissed as a result. Proper priority designation alerts Par Ads, DRU staff and Deputy Commissioners that a case should be looked at quickly for special attention when timeframes are nearing expiration.

4) Parole Administrator Review

a) Timeliness

A Parole Administrator reviewed 98/100 cases. Two cases were extraditions and therefore no Par Ad review occurred. A total of 90/98 Par Ad reviews were timely (92%). *Exhibit 1-C*. The late cases averaged 1.5 days late. *Id.*

b) Remedial Sanctions

RSTS reveals that Par Ads continue to review cases for remedial sanctions and other alternate dispositions, which are recommended frequently. According to the "Parole Administrator Statistics" report, 976 cases were reviewed for remedial sanctions in August 2009. Of those, ICDTP was recommended in 119 cases (12%), Proposition 36 was recommended in 22 cases, the Parolee Service Center was recommended or used in five cases, the Day Reporting Center was recommended or used in three cases, the Residential Multi-Service Center was recommended or used in three cases and "other program" placements or recommendations were used in an additional two cases. There were also a number of cases in which the Par Ad continued on parole (or recommended COP) or requested that the parolee be released from custody pending resolution of the revocation action (NIC).

In total, there were 144/976 cases (15%) in which the Par Ad ordered or recommended a remedial sanction (including Proposition 36).

5) Return to Custody Assessment (RTCA)

Eighty five of 100 RTCAs reviewed for the report were timely (85%). *Exhibit 1-A*. Late RTCAs were, on average, 1.5 days late. *Id.* The ACDC reported that there is not a DC specifically assigned to complete RTCAs at the DRU; rather, the DCs conduct hearings in the mornings and then complete RTCAs once the hearing calendar is complete. The ACDC believes that the furloughs have negatively impacted timeliness at this step. There are no DCs at the DRU on three Fridays every month, which leaves a large number to be completed the following Monday. The ACDC further noted that, during the summer months, many of the Retired Annuitant DCs were out of work hours and the new DCs had not yet graduated from the Academy so there was a DC shortage. However, RSTS shows that 88% of RTCAs

completed in September and 83% of RTCAs completed so far in October were timely (after a full compliment of DCs was available) so a the furloughs seem to be the most significant factor negatively impacting RTCA timeliness.

A review of the RSTS documents shows that the DCs documented their consideration of remedial sanctions, either via the RSTS drop-down menu or written notes, in every case.

6) Appointment of Counsel and Effective Communication with Counsel

a) Timeliness

According to information captured in RSTS, DRU staff documented the date on which the revocation packets were made available to CalPAP in 95/100 cases reviewed. *Exhibit 1-A*. Of those, all but five attorney assignments were timely (95%). *Id.*

According to CalPAP statistics, appointment of counsel continues to be timely for a vast majority of cases processed out of the Wasco DRU. Data from the Wasco CalPAP office reveals the following timeliness statistics for the appointment of counsel:

Month	Cases Reviewed	Cases in compliance	Percent Timely
May 2009	913	849	92.99%%
June 2009	1,004	984	98.01%
July 2009	987	941	95.34%

b) Effective communication

According to CalPAP's data, the following chart reports the provision of disability and source document information to defense counsel:

Month	Total Cases	1073 Missing	Source Doc. Required	Source Doc. Missing
June 2009	1,045	7 (1%)	281	72 (26%)
July 2009	1,031	13 (1%)	257	47 (18%)
August 2009	993	13 (1%)	235	15 (6%)

c) Provision of the CDCR 1654 to Defense Counsel

Twenty two (22%) revocation packets provided to defense counsel did not contain the CDCR 1654, the State's witness list. *Exhibit 1-B*. The witness list must be included in the revocation packet in order to allow the parolee and counsel to determine a defense strategy for the case. This issue was identified during the last self-monitoring tour at Wasco and the ACDC took corrective action by instructing DRU staff to ensure that a copy of the 1654 is provided to defense counsel, even if DAPO did not include a copy in the attorney packet sent from the field unit. The OCC followed up on this issue again given the rather large percentage of packets still missing the 1654 and the ACDC confirmed that DRU staff

continues to include a copy of the 1654 in the attorney packet for all cases where DAPO provided one. In addition, the Wasco CalPAP office verified that around 90% of revocation packets regularly contain the 1654. At this time it is unclear why so many packets reviewed for this tour did not include the 1654 but it is possible that they were not scanned into CalPAP's Revocation Access Database. The next time the monitors visit the DRU follow-up inquiry will be made to determine where the breakdown in processing lies.

7) Probable Cause Hearing (PCH)

a) Timeliness

All 100 cases reviewed for the tour proceeded to a PCH and 99 PCHs were held no later than 13 business days after the parole hold was placed. *Exhibit 1-A*. The PCH for parolee Fuchs (V90753) was one day late and, as discussed in the NOR section above, the notice for this case was late and subsequently the Par Ad review and PCH were delayed.

CalPAP's statistics from the Wasco office reveal the following timeliness percentages:

Month	Cases Reviewed	Cases in compliance	Percent Timely
May 2009	800	748	93.50
June 2009	848	787	92.81%
July 2009	902	806	89.36%

The BPH experienced lower timeliness rates in June and July because the Retired Annuitant DCs had run out of hours and could not work. Wasco did not receive any of the newly hired full-time DCs until August. In August 2009 PCH timeliness jumped back up to 93% for cases closed that month.

b) Documenting Probable Cause Findings

There were 23/100 cases (23%) in which the DC did not adequately document the basis for probable cause. *Exhibits 1-B and 9*. More than one-half of the deficient cases can be traced to one DC, who has since retired. In addition, a large number of deficient written probable cause findings were for absconding charges, where the DC wrote language such as "Probable cause because the parolee's whereabouts was unknown." This language simply states a conclusion and does not provide actual evidence of how the determination that the parolee's whereabouts were unknown was made, or how the elements of absconding were met.

c) ADA and Provision of Accommodations

In 19/100 cases (19%) the DC did not complete Section V of the 1073 in DECS. *Exhibits 1-B and 10*. This is a disturbing statistic given that DECS policies and procedures have been in effect for quite some time and that all DCs have all been trained on the requirements of DECS. However, a majority of the cases in which Section V was not

completed were heard by one DC who has since retired. The ACDC reported he will personally train the DC on DECS should the DC reinstate or return as a retired annuitant.

There were also two cases in which DRU staff did not complete Section IV of the 1073 in DECS to inform BPH staff of accommodations that would be required for the hearings. *Exhibit 11.*

d) Remedial Sanctions

The RSTS documents revealed that the parolee was offered a remedial sanction in lieu of a return to custody in 23/100 cases at the PCH. Remedial sanction endorsements were primarily to the ICDTP but there were also a number of cases in which the parolee was placed in a Residential Multi-Service Center or Parolee Service Center. Furthermore, there were an additional four cases in which the parolee was given Proposition 36 at the PCH. These numbers demonstrate CDCR's continued use of remedial sanction programs.

8) Revocation Hearing

a) Timeliness

All nine revocation hearings for which revocation packets alone were reviewed were heard within 35 calendar days of the parole hold. *Exhibit 1-A.* Eleven of the twelve additional cases for which hearing tapes were reviewed had timely revocation hearings. Therefore, 20/21 total revocation hearings were timely (95%).

RSTS shows that revocation hearings at Wasco were timely for 97% of cases in June, 96% of cases in July and 97% of cases in August 2009.

CalPAP's statistics from the Wasco office reveal the following timeliness percentages:

Month	Cases Reviewed	Cases in compliance	Percent Timely
May 2009	65	62	95.40%
June 2009	67	66	98.5%
July 2009	79	77	97.50%

b) Quality of Hearings

The OCC reviewed 12 revocation hearing tapes for this report. Overall the quality of the hearings was in compliance with the requirements of the Injunction and current departmental policies and procedures. The DCs conducted independent ADA inquiries and provided accommodations where required or requested. The DCs allowed the parolee and defense counsel to present evidence/defenses and question adverse witnesses.

Two hearing tapes demonstrate the BPH's recent efforts to make and keep recordings for all hearings, even where charges are dismissed early on or the parolee elects to accept an offer and forego a full revocation hearing. Parolee Mendez (F39274) faced four charges. Prior to the hearing the attorney and parolee discussed his desire to accept an offer and waive

the hearing. The parolee was willing to accept an 8I return to custody (reduced from 10I offered at the PCH), which the parole agent agreed was appropriate. The attorney had the parolee sign the BPH 1004b, which was submitted to the DC. Although the parolee accepted the offer in advance of the hearing the DC nonetheless had the parties go on record, where an ADA and rights review was conducted and the charges reviewed. The DC also ensured the parolee understood the ramifications of waiving his right to a hearing in favor of accepting a return to custody offer before concluding the brief hearing.

The hearing for parolee Brown (J69530) was even shorter. After the ADA and rights review defense counsel made a preliminary timeliness objection because the hearing was being held on the forty second calendar day (a timely hearing was initially scheduled but postponed because the parolee was located at another CDCR institution- no good cause). The DC dismissed the case for violating *Valdivia* timeframes but the brief hearing was nonetheless recorded.

While analysis of verbal objections and the quality of the revocation hearing documents is discussed later in this report, a summary of some of the interesting or deficient aspects of the hearings is as follows:

- Mendez (F39274)- the BPH's copy of the 1073 documents a need for a magnifier but the attorney's copy did not have that notation. Both documents were signed on the same date but are not identical. It appears the accommodation notation was made on the BPH copy after the BPH and attorney copies were separated.
- Some DCs provide an explanation of the proceeding before an ADA review is conducted (for example, Mendez (F39274)). The DCs should ensure that effective communication is established before providing explanation of the proceeding in order to gauge whether a parolee may require some accommodation to best understand and communicate (for example, simple English or an interpreter).
- Parolee Dulaney (K99748) was charged with resisting arrest. Police received a call about a possible sexual assault and responded to what was ultimately an incorrect address. However, at the time they arrived, officers noted there were no other residences in the immediate area of the address provided so officers stopped all passing vehicles and approached the one residence while they awaited verification of the correct address. The parolee was on the porch of the residence and the officers ordered him to stop and put his hands up but the parolee retreated into the house. Vehicles in the area were stopped, inspected and released. The parolee was admonished to exit the house several times, some over a loudspeaker, before he eventually surrendered to police. The parolee had requested the dispatch tape reporting the incorrect address to show that he was in no way doing anything wrong and that he had no reason to think the police were yelling at him. At the revocation hearing the parolee attempted to fire his attorney for failing to produce the dispatch tape but ultimately allowed the hearing to proceed. Because the tape did not include in-depth discussion regarding production of the tape, the OCC contacted CalPAP for assistance. According to CalPAP, the DC at the PCH denied the parolee's request to

produce the tape because the ultimate location of the call did not negate the parolee's obligation to follow directions from officers or consent to search as an active parolee. The assigned attorney rightly agreed that the tape would offer nothing in the way of a defense for the parolee and there was no wrongdoing on the part of the attorney.

- There were several cases where the DC did not discuss remedial sanctions at all during the hearing (for example, Dulaney (K99748) and Cota (F37655)).

c) Qualitative Document Review

- Cota (F37655)- The DC dismissed the drunk in public charge during the hearing and documented the basis for dismissal in the "Basis for Conclusion" box of the BPH 1103-REV but the "Summary of Findings" box is checked in a contradictory manner to indicate that a good cause finding was made on the charge. *Exhibit 12.*
- There were two cases in which the DC did not adequately document the evidentiary basis for their good cause findings. *Exhibits 1-B and 13.* Again, both deficient good cause summaries were for absconding charges, where the DC stated that the parolee was unavailable for supervision, without including actual facts to that end.
- There were two cases in which the DC did not complete Section V of the BPH 1073 at the revocation hearing. *Exhibits 1-B and 10.*

d) Hearsay Evidence and Comito

Out of the twelve hearing tapes there were two cases in which the admission of hearsay evidence was challenged.

Parolee Cota (F37655) was charged with use of alcohol, drunk in public, violating curfew and failing to charge his GPS device. One of two police officers who arrested the parolee was subpoenaed. When testifying about the alcohol-related charges, the officer stated that his partner thought the parolee was under the influence. Defense counsel objected to the admission of the hearsay statement. The DC asked the officer if he was with his partner that day during the interaction and the officer verified that both officers were on the scene and that he personally participated in the interaction and informal sobriety tests. The DC denied the objection but failed to document the objection on the BPH 1103-PCH. Although the objection was initially lodged as a *Comito* objection, the DC's further questioning confirmed there was no hearsay statements at issue that would require application of the *Comito* balancing test because the officer could testify to his own observations and interactions with the parolee rather than relying on any statements made by his partner.

Parolee Dulaney (K99748) was charged with resisting arrest after he failed to exit a residence where police responded to a report of a possible sexual assault. Two police officers who were present during the arrest testified that several other officers yelled and made announcements over a loudspeaker system directing the parolee to exit the residence. Defense counsel objected to the admission of the directives yelled by other officers as

hearsay. The DC applied the *Comito* balancing test and denied the objection. The DC found good cause for the failure of other officers to attend the hearing because there were numerous officers who responded to the call and several different officers yelled at different times. It was not feasible for the parolee agent to identify which officers yelled the various verbal commands because they were not all named in the police report. The DC noted on the BPH 1103 that the hearsay statements were corroborated by the two testifying officers who heard the same announcements. The DC verbally conducted analysis on the objection and documented it in RSTS.

e) Other Objections

- Parolee Willis (V43626) was charged with association with prohibited persons (three counts) and violating curfew. Defense counsel made several objections throughout the hearing. First, she made a preliminary objection that a witness subpoenaed by the defense stated that the parole agent told her she did not have to appear at the hearing and that nothing would happen to her if she did not show up. The DC immediately verified that the witness was present to the attorney's objection was needless. In addition, the parole agent contradicted the attorney's statements by reporting he had informed the witness she must attend the hearing but could not be criminally prosecuted for failing to appear. Defense counsel next objected to the special condition of parole placing a curfew on the parolee, arguing that gang status/participation does not warrant a curfew. The parole agent testified that the parolee is on a GPS caseload due to his criminal gang activity and that imposition of curfews on gang members is a reasonable means to reduce criminal activity. The DC verbally overruled the objection, stating that the condition is reasonable. The DC did not, however, apply the full three-prong *Lent* analysis. Defense counsel also made a few additional objections that were not appropriate for administrative proceedings and therefore do not merit discussion here.
- Parolee James (F50475) was charged with battery on a spouse. The victim initially reported to police that the parolee had pulled her hair, pushed and hit her during an argument. At the hearing the victim recanted and told stated she had fallen off a chair. During testimony the arresting officer stated that, in his opinion, the injuries sustained by the victim were consistent with a physical altercation as opposed to falling off a chair. Defense counsel objected to this statement but the DC allowed it, noting that the officer's extensive experience with domestic calls and injuries sustained from them gave him knowledge to opine whether the injuries were the likely result of a fall or a physical altercation. The objection and ruling were document in the hearing documents.

9) Mentally Ill

Per CalPAP's GAP Parolee logs produced between August 11 and the issuance of this report, there are five cases out of Wasco State Prison that are or were suspended due to the parolee's mental illness.

- Trelane Bell (F44694) - PCH proceeding was postponed on 4/2/09 and the parolee was added to the list 4/7/09. Regular checks have occurred over the past six months and as of 10/20/09 the parolee was not able to proceed with the revocation process per his attorney.
- Queen Johnson (K44913) – The PCH proceeding was postponed on 4/7/09 and he was added to the MIS list on 4/10/09. Standard checks were noted over the past months. On 8/13/09 his attorney requested the parolee remain on the PCH calendar. Per RSTS CSR comments, a hearing was scheduled for 8/26/09; however, it was postponed due to the parolee inability to effectively participate in the hearing process. Because the RTCA was due to expires on 8/19/09, an administrative action gave the parolee CTS without time loss.
- Luke Perry (V75427) – On 7/3/09 PCH proceedings were postponed for a requested mental health evaluation. The parolee was added to the MIS list on 7/3/09. Regular checks confirmed the parolee was not able to proceed with the revocation process. Current MIS list indicates on 10/9/09 the attorney check revealed the parolee had been moved to SVSP and a new attorney will be assigned. On 10/23/09, the attorney could not confirm if the parolee was at SVSP. An OBIS check confirms the parolee is currently at SVSP – DMH.
- Erik Peterson (F78803) – PCH proceedings were suspended on 6/12/09. The parolee was added to the MIS list on 6/12/09. Regular follow-ups are noted. On 9/30/09 an administrative action gave the parolee CTS for time served through 10/9/09.
- Michael Moles (V86895) – On 3/26/09 PCH proceedings were suspended as parolee was psychiatrically unavailable. Routine checks with defense attorney and doctors have resulted in the conclusion the parolee is suffering from severe dementia and will never be able to proceed with his revocation. 7/30/09, per attorney, family and AOR are working towards an alternative and appropriate placement. Per OBIS and RSTS, the parolee was released on 9/15/09.

10) Revocation Extension

The OCC reviewed 11 revocation extension packets provided to CalPAP from May15, 2009 to June 15, 2009 for this report. *Exhibit 14* is the timeliness analysis summary for the revocation extension cases.

a) Timeliness:

CDC804

In 9/11 cases (82%) the 804 was not received at Case Records within one business day, as required by current policy and procedure. It is crucial that the 804 and a copy of the RVR 115 get to Records within one business day to allow timely processing of the case. The reason for late delivery of the CDC804 appears to be a lack of knowledge regarding the required timelines and revocation extension process as it relates to Valdiva.

C&PR review

6/11 cases (55%) were late at the C&PR review step. 5/6 late cases were two or more days late at the 804 step, causing the C&PR review late. All 11 cases were reviewed in an expedited manner once it reached the C&PR. In eight cases the C&PR reviewed the case the same day it was received, two cases were reviewed within one business day of receipt and one case was reviewed within two business days of receipt. It is apparent the C&PR is making every effort to review cases in a timely manner.

Notice of Rights

In 9/11 (82%) cases, the NOR was not conducted timely. In eight of the late cases the NOR was conducted on a Thursday regardless of when the CCI received the case from the C&PR. A phone call to the C&PR revealed that the Administrative Segregation Unit conducted its Institutional Classification Committee (ICC) on Thursdays and the CCI's were holding the NOR packet to conduct the NOR at the same time as ICC. The C&PR said he would immediately stop this practice from happening any longer.

The following chart is a summary of each case where the notice was late, including good cause/no good cause analysis for untimeliness:

Parolee Name CDC #	Days Late	Cases for late NOR	Reason
Chay F24430	2	Discovery date of April 30, 2009 NOR conducted on May 7, 2009	The 804 was received 2 business days late. However; the NOR was not conducted until (Thursday) May 7, making it late with NGC.
Gilbert T37494	2	Discovery date of May 7, 2009 NOR conducted on May 14, 2009	The 804 was received 1 business day late. However; the NOR was not conducted until (Thursday) May 14, making it late with NGC.
Howard F73272	2	Discovery date of May 7, 2009 NOR conducted on May 14, 2009	The 804 was received 2 business days late. However; the NOR was not conducted until (Thursday) May 14, making it late with NGC.
Lopez F74906	2	Discovery date of March 12, 2009. NOR conducted on March 19, 2009	The 804 and C&PR processes were conducted timely. However; the NOR was not conducted until (Thursday) March 19, making it late with NGC.
Ortega T46533	2	Discovery date of May 14, 2009. NOR conducted on May 21, 2009	The 804 and C&PR process were conducted timely. However; the NOR was not conducted until (Thursday) May 21, making it late with NGC.
Palacios T74085	1	Discovery date of May 8, 2009 NOR conducted on May 14, 2009	The 804 was 3 business days late and the C&PR review and the NOR were conducted on the same day the 804 was received (Thursday). It was late with NGC.
Syratsamy G22330	2	Discovery date of on April 30, 2009	The 804 was received 2 business days late. However; the NOR was

		NOR conducted on May 7, 2009	not conducted until (Thursday) May 7, making it late with NGC.
Vasquez V77251	23	Discovery date of April 15, 2009 NOR conducted on May 21, 2009	The 804 was 5 business days late making the NOR late with NGC.

The following two cases were late at the NOR although both cases were timely at the 804 and the C&PR review:

Ortega T46533: The discovery date was May 14, 2009, the 804 was received in Records within the NLT of one business day, the C&PR conducted a review and assigned it to the CCI within the NLT of two business days. However; the NOR was not served until the following Thursday May 21, 2009. Per the departmental policy and procedure, the NOR step must be completed no later than business days from the discovery date. The discovery date was May 14, 2009 and the NOR should have been completed no later than May 19, 2009. Even though the case was two days late at this step the remainder of the case was processed timely.

Lopez F74906: The discovery date was March 12, 2009, the 804 was received in Records within the NLT of one business day, and the C&PR conducted a review and assigned it to the CCI within the NLT of two business days. However; the NOR was not served until the following Thursday, March 19, 2009. Per departmental policy and procedure, the NOR step should have been completed no later than March 17, 2009. Even though the case was two days late at this step the remainder of the case was processed timely.

Referral to BPH

In 9/11 cases (82%) the BPH referral was timely. Below is a summary of the two late cases:

Lopez F-08051: The 804 was received 4 business days late. The C&PR made efforts to expedite the process and was able to conduct the review and give the NOR packet to the CCI the same day (May 4, 2009) however; the CCI did not conduct the NOR until (Thursday) May 7, 2009 causing the to be one day late at the BPH referral step.

Vasquez V77251: The NOR was served 23 business days late, which naturally caused the late BPH referral.

Attorney appointed

All 10 (100%) cases processed at this step were timely. One case (Vasquez V-77251) was dismissed at the REA for a violation of the *Valdivia* timeline and therefore an Attorney was not appointed.

Revocation Extension Assessment (REA)

Only 1/11 (1%) cases was untimely at this step. The late case (Vasquez V-77251) was dismissed at this step for violation of the *Valdivia* timeline.

Probable Cause Hearing (PCH)

All 10 cases that went to a PCH were timely at this step (100%). RSTS shows one late PCH (Howard F-73272). However, during his first PCH on May 22, 2009 (5 days before the NLT for the PCH) the parolee and his attorney requested an 18 day timeliness waiver in order for the parolee to complete the 115 hearing process. The DC granted the waiver and conducted the hearing on June 8, 2009 dismissing the case per the findings of the CDC115. Based on the timeliness waiver, this case was not late.

Revocation Extension Hearing

The one case (Martinez K-24827) that proceeded to a revocation extension hearing was timely.

b) Completeness of the packets

Of the 11 cases reviewed only one was found to be lacking in completeness. Inmate Lopez's CALPAP packet did not contain a copy of the RVR115. It did include a hand written copy of a CDC 837C-1 supplemental report but that report does not address the specific charge he was facing in the revocation extension action.